

Amendment Number 1
to
Contract Number DIR-TSO-4030
between
State of Texas, acting by and through the Department of Information Resources
and
Gartner, Inc.

This Amendment Number 1 to **Contract** Number **DIR-TSO-4030** ("**Contract**") is between the Department of Information Resources ("**DIR**") and Gartner, Inc. ("**Vendor**"). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 3, Service Offerings**, is hereby amended as follows:

Services available under this Contract are limited to the Deliverables-Based Information Technology Services Technology Categories as specified below. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

No hardware or software products and related services may be sold through this contract. Any products needed to deliver final services must be procured through another contract vehicle. Examples of these products include: Software as a Service (SaaS), subscriptions, annual license maintenance and support, and web hosting.

Business Intelligence (BI) and Data Warehouse

- 1) Definition: BI enables an organization to perform in-depth analysis and includes, where required, data mining of detailed business data providing real and significant information to business users. BI may include an integrated group of operational and decision support applications and databases. BI makes use of tools designed to easily access data warehouse data. A data warehouse collects, organizes and makes data available for the purpose of analysis and gives organizations the ability to access and analyze information about its business. The function of the data warehouse is to consolidate and reconcile information from across disparate business units and IT systems and provide a context for reporting and analysis.
- 2) Examples of included services: architectural design, extraction, transformation and loading of data sources; planning, assessment, product installation and tuning; prototype development, deployment, data cleansing, data mart development and support; data migration, integration with data mining; integration with business intelligence tools and/or systems; data scrubbing; data transformation; training and knowledge transfer.

Enterprise Resource Planning (ERP)

- 1) Definition: ERP is an amalgamation of an organization's information systems designed to automate and integrate a variety of functions, commonly referred to as "back

office”, including financials, human resources and asset management. These systems are modularized and generally highly configurable.

- 2) Examples of included services: planning and assessment; requirements development; business process reengineering (BPR); implementation and conversion services; application programming and support services; database administration, system software administration and support; functional support; and training support.

Information Technology Project Management

- 1) Definition: Project Management service providers may perform any or all of the project management processes identified by the Project Management Institute as published in the PMBOK® Guide, Fifth Edition or most recent.
- 2) Examples of included services: utilizing the Customer’s tools and processes, using off-the-shelf tools, using Vendor’s own proprietary tools and processes to manage a project and using the Texas Project Delivery Framework. Information about the framework tool can be found at the following url:
<http://www.dir.texas.gov/management/projectdelivery/projectframework/pages/framework.aspx>

Technology Upgrade/Migration and Transformation

- 1) Definition: Technology Upgrade/Migration may be required to increase business functionality, reengineer a business function, keep current with vendor upgrades or when upgrading existing technology. Technology Transformation may be accomplished by converting/migrating legacy applications to new technology either with or without new business functionality or it may include introducing new technology into the enterprise. Technology Upgrade/Migration may also include providing website content accessibility compliance.
- 2) Examples of included services: assessments of the current application portfolio, evaluation of the technology assets before beginning technology transformation and Business Case development for justification of an initiative. Also included are: technology transformations, which may include, appropriate Return on Investment (ROI), benchmarks and milestones. The following activities may also be included: planning, analysis, requirements development, proof of concept, deployment, implementation, integration, remediation, data migration, documentation, application programming and support services; and training support.

Information Technology Assessments and Planning

- 1) Definition: IT Assessments and Planning may include IT effectiveness, maturity, governance, project management and architecture. Strategic planning activities may include mission statement development, visioning and goals, objectives, and strategy development. Tactical planning may require that actionable plans and roadmaps be provided.

- 2) Examples of included services: IT assessments, including enterprise architecture and cloud assessments; staff knowledge, skills and abilities (KSAs) assessments; bandwidth assessments, network performance and strategic and tactical planning.

Independent Verification and Validation (IV&V)

- 1) Definition: Verification and Validation are independent procedures that are used together for in-depth analysis by checking that a product, service, or system meets requirements, independent oversight of SDLC processes and specifications and that it fulfills its intended purpose.
- 2) Examples of included services: Validation of software design to meet system needs/requirements; traceability of safety critical requirements; design analysis of selected critical algorithms; and code analysis of mission-critical software components and the independent oversight and assessment of systems development life cycle (SDLC) processes (such as issue and risk management, requirements analysis, testing, data conversion etc.)

Information Technology Procurement Assistance

- 1) Definition: Information Technology Procurement Assistance services may include assistance in IT Statement of Work (SOW) and/or Request for Offer (RFO) development. Procurement assistance activities may include requirements gathering, scoring criteria development, and evaluation criteria development.
- 2) Examples of included services: specification development, Statement of Work (SOW) development, and RFO development for IT products and services.

Note: Under Texas Government Code, § 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The selected Vendor and the employees of that Vendor who perform IT Procurement Assistance Services will be ineligible to respond to any resulting solicitation(s).

2. **Appendix A, Standard Terms and Conditions for DBITS Services Contracts**, is hereby restated in its entirety and replaced with the attached Appendix A. Standard Terms and Conditions for DBITS Services Contracts dated **01/08/2018**, except where previous authorized exceptions to Appendix A were allowed and documented as part of the Contract. In such cases, the previously authorized exceptions shall be applied to the portions of the new Appendix A which are comparable to those in the earlier Appendix A for which they were written, and this without regard for the numbering or lettering associated with any of the documents. Applied in such manner, the exceptions shall remain in full force and effect until such time the contract expires or is terminated.

3. **Previously Authorized Exceptions to Contract and any Appendices.**

A. Appendix A, Section 4. Intellectual Property Matters, B. Ownership is hereby replaced as follows:

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday thru Friday, (8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

Ownership of Prior Rights by Customer — All tangible and intangible property including the Intellectual Property Rights therein, which are owned by Customer prior to the execution of any Statement of Work (e.g., copyrights, trademarks, etc.) shall be exclusively owned by the Customer and Vendor shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such property for purposes set forth in a Statement of Work and only for the duration of such Statement of Work which is hereby granted to Vendor by Customer.

Ownership of Prior Rights by Vendor — All tangible and intangible property including the Intellectual Property Rights therein, which is owned by Vendor prior to the execution of any Statement of Work (e.g., pre-existing tools, processes, methodologies, proprietary research data and proprietary databases) (hereinafter “Pre-existing Vendor IP”) shall continue to be exclusively owned by the Vendor and Customer shall have no ownership thereof and no rights thereto other than the limited, non-exclusive right to use such Pre-existing Vendor IP for internal business use, solely for purposes set forth in a Statement of Work.

Ownership of Pre-Existing Rights Embodied in Deliverables — To the extent any pre-existing rights or property of either party are embodied or contained in the Works or a Deliverable, each party retains ownership of its pre-existing rights and property (e.g., Customer ownership of the Works that include Pre-existing Vendor IP shall extend only to the additional work product or deliverables that do not comprise such Pre-Existing Vendor IP). Each party hereby grants to the other an irrevocable, perpetual, non-exclusive, worldwide, royalty free right and license to use, execute, reproduce and display, perform and distribute copies of the Works as necessary for their business purposes or to enjoy the benefits of the services to be provided under a Statement of

Work (and provided further that Vendor does not identify Customer by name or otherwise use any of Customers confidential or proprietary information).

B. Appendix A, Section 4. Intellectual Property Matters, G. Return of Materials Pertaining to Work Product is hereby replaced as follows:

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete that Customer has paid for. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

C. Appendix A, Section 9. Vendor Responsibilities; A. Indemnification, 2) Acts or Omissions, is hereby replaced as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any intentional, willful, negligent, or otherwise wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

D. Appendix A, Section 9. Vendor Responsibilities; K. Limitation of Liability, is hereby replaced as follows:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii)Vendors Liability for damages of any kind to the Customer shall be limited to the greater of one and one half (1.5) times the total amount of fees paid to Vendor under the Task Order or Statement of Work that gave rise to said claim or \$1,000,000.00. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification

requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

All other terms and conditions of the **Contract** not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1 and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature.

Gartner, Inc.

Authorized By: Signature on File

Name: Phillip A. Cummings

Title: Contracts Counsel

Date: 5/23/2018

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 5/30/2018

Office of General Counsel: 5/30/2018